

## **REMARKS**

### **I. General**

Claims 1-16 are pending in the Application. Applicant notes that the Office Action Summary states that claims 1-19 are pending in the Applicant; however, as only claims 1-16 are pending, Applicant believes the Office Action Summary contains a typographical error. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5). The disclosure is objected to because of informalities. Claims 1-16 are rejected under 35 U.S.C. § 112 for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Claims 1-16 are rejected under 35 U.S.C. § 101 because it is unclear whether the Applicants are claiming an apparatus, system, or software. Claims 1 and 3 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,138,122 to Smith et al. (hereinafter *Smith*). Claims 2 and 4-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smith* and further in view of U.S. Patent No. 6,519,638 to Forman et al. (hereinafter "*Forman*"). Paragraphs [0024] and [0042] and claims 1-8 are amended herein.

### **II. Objections to the Drawings**

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include a reference character not mentioned in the description. Specifically, reference character 43 is shown in figure 1 but not mentioned in the description. Office Action, page 2. Applicant has corrected the typographical error regarding reference character 43 by amending paragraph [0024] to recite the originally intended number "43" instead of mistyped number "42." Accordingly, all character references are properly mentioned in the description; therefore, the Application is in compliance with 37 CFR 1.84(p)(5). As such, Applicant requests the amendment be entered and the objection of record be withdrawn.

### **III. Objections to the Specification**

The specification is objected to for informalities. Specifically, the Examiner states that Applicant "need[s] to insert serial number for the patent application reference (Pg. 9 ¶1)." Office Action, page 3. Applicant believes Examiner is referring to [0042] of the Applicant and has

amended the paragraph accordingly. If Applicant is mistaken, Applicant kindly requests that Examiner clarify the object in a non-final office action. In amending [0042] of the present Application, Applicant inserted the referenced patent application's serial number and publication number. As such, Applicant believes the incorporated reference is clearly identified and therefore in compliance with 37 CFR § 1.57(b). Thus, Applicant requests the amendment be entered and the objection of record be withdrawn.

#### **IV. Rejections Under 35 U.S.C. § 112**

##### **A. Claims 1-16**

Claims 1-16 stand rejected for being unclear regarding whether Applicant is claiming an apparatus, system, or software. Specifically, the Office Action states that the claims "are claiming an apparatus comprising a system but all the components in the system are software." Office Action, page 3. Claims 1-8 have been amended herein to clarify that each claim is claiming a system. Claims 9-16 have not been amended herein because each of claims 9-16 clearly claims an apparatus. The Office Action goes on to state that "[n]one of the objects are limited to exclusively hardware." Office Action, page 3. While not conceding the Examiner's assertion, Applicants note that the Office Action has cited no law which requires the objects must be limited to exclusively hardware. "Note that an apparatus claim with process steps is not classified as a 'hybrid' claim; instead, it is simply an apparatus claim including functional limitations. See, e.g., *R.A.C.C. Indus. v. Stun-Tech, Inc.*, 178 F.3d 1309 (Fed. Cir. 1998) (unpublished)." M.P.E.P. 2106 IV B. As such, while the claims may include software portions, the claims are system claims and apparatus claims. Therefore, Applicant respectfully requests the rejections of record be withdrawn and the claims be allowed.

##### **B. Claim 1**

Claim 1 stands rejected under 35 U.S.C. § 112, second paragraph, for claiming a relative term. Specifically, claim 1 recites the term "interfaced" which the Office Action states "is a relative term which renders the claim indefinite." Office Action, page 3. However, interfaced is

not a relative term; therefore, Applicant kindly asserts the specification does not need to provide a standard for ascertaining the requisite degree.

Further, one of ordinary skill in the art would understand the meaning of interfaced as the term is recited in the claim. The Office Action states that “it is unclear how the applicant is defining interfaced the second time when communicating with measurements.” Office Action, page 4. Claim 1 recites “interface with physical agents and heterogeneous measurements so that the interfaced physical agents perform the interfaced heterogeneous measurements for a test in accordance with control by an end user via the GUI” (emphasis added). The term “interfaced” is part of the term “the interfaced heterogeneous measurements,” and the term “interfaced” is included to ensure that the term “the interfaced heterogeneous measurements” has proper antecedent basis. As such, one of ordinary skill in the art would understand the scope of the term, and Applicant requests the rejection of record be withdrawn.

#### **V. Rejections Under 35 U.S.C. § 101**

Claims 1-16 stand rejected because it is unclear whether Applicant is claiming an apparatus, system, or software. As explained above, regarding the 35 U.S.C. § 112 rejection of claims 1-16, each of claims 1-8 clearly define a system and each of claims 9-16 clearly define an apparatus. As such, Applicant requests the rejection of record be withdrawn and the claims be allowed.

#### **VI. 35 U.S.C. § 102 rejections of claims 1 and 3**

Claims 1 and 3 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Smith*. However, it is well settled that to anticipate a claim, a reference must teach every element of the claim, see M.P.E.P. § 2131. Moreover, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he elements must be arranged as required by the claim,” see M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

Claim 1 recites “[a] distributed testing system comprising ... a server . . . .” The Office Action cites *Smith*, col. 2, lines 19-22, as teaching this limitation. Office Action, page 5.

However, the elements of *Smith* are not arranged as required by claim 1. The servers, in *Smith* pointed to by the Office Action are the servers under test. Col. 3, lines 60-67. Specifically, *Smith*'s servers which are under test are not part of *Smith*'s distributed testing system, but instead, *Smith*'s servers are an element of the email system being tested by the *Smith*'s distributed testing system. As such, the servers cited by the Office Action are not arranged as required by claim 1 because the servers cited by the Office Action are not part of a distributed testing system. Thus, *Smith* fails to teach "[a] distributed testing system comprising ... a server . . . ."

Furthermore, claim 1 recites "a server communicating with ... a graphical user interface (GUI) communicating with the server . . . ." The Office Action cites *Smith*, col. 3, lines 15-18, as teaching this limitation. Office Action, page 5. However, the server disclosed by *Smith* is not taught as communicating with *Smith*'s GUI. As explained above, *Smith*'s server is under test by *Smith*'s distributed testing system and is not *a component* of the distributed testing system. It appears that *Smith*'s software agents take measurements from the server (and all other components of the system under test), and the software agents communicate the results to the GUI. Col. 3, lines 19-22 and lines 43-46. As such, *Smith*'s GUI does not appear to communicate with the server. Thus, *Smith* does not teach "a server communicating with ... a graphical user interface (GUI) communicating with the server . . . ."

Accordingly, *Smith* does not teach each and every element of claim 1 and does not arrange the elements as required by claim 1; thus, *Smith* does not anticipate the claim. Applicant requests the rejection of record be withdrawn and the claim be allowed. Furthermore, claim 3 depends from claim 1 thereby inheriting all the limitations therein. Thus, at least for the reasons detailed above regarding claim 1, claim 3 recites limitations not taught by *Smith*. Therefore, Applicant requests the rejection of claim 3 be withdrawn and the claim be allowed.

## **VII. Rejections Under 35 U.S.C. § 103**

Claims 2 and 4-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smith* and further in view of *Forman*. However, in an obviousness rejection, "[u]nder § 103, the

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scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 15 - 17 (1966). With regard to the claims rejected under 35 U.S.C. § 103 in the current Application, the Office Action does not show that claims are obvious under the framework set out in *Graham*. Among other things, the differences between the applied art and the claims set the claims apart from the applied art. See *United States v. Adams* 383 U.S. 39, 48 (holding that the Government erred in concluding that wet batteries are old in the art because, among other things, “the fact that the Adams battery is water-activated sets his device apart from the prior art.”) The rejected claims are considered below.

**A. Dependent claims 2 and 4-8**

Dependent claims 2 and 4-8 depend from independent claim 1 thereby inheriting all the limitations therein. Therefore, as explained above regarding claim 1, the dependent claims recite limitations not taught by *Smith*. Further, *Forman* is not relied on as curing the above-identified deficiencies. As such, the cited combination does not make claims 2 and 4-8 obvious, and Applicant requests the rejections of record be withdrawn.

**B. Independent claim 9 and dependent claim 10**

Claim 9 recites “a graphical user interface (GUI) communicating with the server . . . .” The Office Action cites column 2, lines 62-63 of *Smith* as teaching this limitation. Office Action, page 12. However, *Smith* does not appear to teach having the GUI communicate with the server. Further, the Office Action does not rely on *Forman* as teaching this limitation. As such, the cited combination does not disclose “a graphical user interface (GUI) communicating with the server . . . .”

Further, claim 9 requires “physical agents.” The Office Action admits *Smith* fails to teach this element and relies on *Forman*, column 6, lines 4-59, as teaching physical agents. Office Action, page 12. However, the cited portion of *Forman* fails to teach a physical agent. *Forman* teaches controller probes; however, controller probes do not appear to be physical agents because *Forman* defines collector probes as “objects” (see, col. 6, lines 51-52) and objects

are merely code entities (*see*, col. 3, lines 29-30). As *Forman* teaches controller probes are merely code entities rather than a physical agent (hardware device) as required by claim 9 (*see* Application, paragraph [0017]), *Forman*'s controller probes do not teach physical agents. Further, it appears *Forman* fails to teach physical agents in any portion of his disclosure. As such, because the Office Action does not rely on *Smith* as teaching this element and *Forman* does not teach this element, the cited combination fails to make claim 9's "physical agents" obvious.

Further, claim 9 requires "a framework interfacing ... physical agents to the logical agent, the server and the GUI via plug-ins . . . ." The Office Action admits *Smith* does not teach this limitation of claim 9, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing a framework interfacing physical agents to the logical agent, the server, and the GUI. However, *Forman* does not teach a framework interfacing these four elements recited above. While, *Forman* teaches system data collector 124 is implemented from a framework (*see*, col. 6, lines 4-5), *Forman* does not appear to teach system data collector 124 interfaces physical agents to a logical agent, a server and a GUI. Instead, *Forman* discloses that system data collector 124 interfaces a collection controller, a collection notifier, a collection synchronizer, a collection data storage, and collection probes. (col. 6, lines 4-59). As interfacing a collection controller, a collection notifier, a collection synchronizer, a collection data storage, and collection probes does not teach interfacing the four elements recited by claim 9, *Forman* fails to teach "a framework interfacing ... physical agents to the logical agent, the server and the GUI via plug-ins . . . ."

Further still, claim 9 recites "a framework...interfacing, without technical intervention, a plurality of measurements to the server and the GUI via plug-ins . . . ." The Office Action admits *Smith* does not teach this limitation of claim 9, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing a framework interfacing measurements to a server, and a GUI. However, *Forman* does not teach a framework interfacing these three elements recited above. As explained above, *Forman* discloses that system data collector 124 interfaces a collection controller, a collection notifier, a collection synchronizer, a collection data storage, and collection probes. As interfacing a collection controller, a collection notifier, a collection

synchronizer, a collection data storage, and collection probes does not teach interfacing the three elements recited in claim 9, *Forman* does not appear to teach a framework interfacing measurements to a server, and a GUI. As such, *Forman* fails to disclose “a framework...interfacing, without technical intervention, a plurality of measurements to the server and the GUI via plug-ins . . . .” Accordingly, the cited combination fails to teach each and every limitation of claim 9.

Thus, Applicant requests the rejection of record be withdrawn and the claim be allowed. Moreover, claim 10 depends from independent claim 9 thereby inheriting all the limitations therein. Therefore, at least for the reasons detailed above regarding claim 9, limitations of claim 10 are not taught by the cited art. Thus, Applicant requests the rejection of record be withdrawn and the claim be allowed.

**C. Independent claim 11 and dependent claims 12-15**

Claim 11 recites “a graphical user interface (GUI) communicating with the server . . . .” The Office Action cites column 2, lines 62-63 of *Smith* as teaching this limitation. Office Action, page 12. However, *Smith* does not appear to teach his GUI communicates with his server. Further, the Office Action does not rely on *Forman* as teaching this limitation. As such, the combination fails to teach “a graphical user interface (GUI) communicating with the server . . . .”

Claim 11 recites “a GUI integration framework . . . a server integration framework . . . and an agent integration framework . . . .” The Office Action admits *Smith* does not teach this limitation of claim 11, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing these three required frameworks. While *Forman* discloses a single framework, system data collector 124, it does not appear that *Forman* discloses three frameworks as required by claim 11 (a GUI integration framework, a server integration framework, and an agent integration framework). As such, *Forman* does not disclose “a GUI integration framework . . . a server integration framework . . . and an agent integration framework . . . .”

Further, claim 11 recites “a GUI integration framework interfacing the GUI with GUI plug-ins for physical agents, and interfacing the GUI with GUI plug-ins for heterogeneous measurements . . . .” The Office Action admits *Smith* does not teach this limitation of claim 11, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing this limitation. However, *Forman* does not appear to disclose a GUI integration framework interfacing the GUI with GUI plug-ins for physical agents and interfacing the GUI with GUI plug-ins for heterogeneous measurements. While *Forman* teaches system data collector 124 is implemented from a framework (*see*, col. 6, lines 4-5), data collector 124 does not teach a GUI integration framework. Further, *Forman* does not appear to teach system data collector 124 interfaces a GUI with GUI plug-ins. Instead, *Forman* discloses that system data collector 124 interfaces a collection controller, a collection notifier, a collection synchronizer, a collection data storage, and collection probes. Col. 6, lines 4-59. Further, *Forman* fails to teach physical agents. As such, *Forman* fails to teach “a GUI integration framework interfacing the GUI with GUI plug-ins for physical agents, and interfacing the GUI with GUI plug-ins for heterogeneous measurements . . . .”

Claim 11 recites “a server integration framework interfacing the server with server plug-ins for the physical agents, and interfacing the server with server plug-ins for the heterogeneous measurements . . . .” The Office Action admits *Smith* does not teach this limitation of claim 11, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing this limitation. However, *Forman* does not appear to teach the interfacing required by this limitation of claim 11. While, *Forman* teaches system data collector 124 is implemented from a framework (*see*, col. 6, lines 4-5), data collector 124 does not teach a server integration framework. Further, *Forman* does not appear to teach system data collector 124 interfaces a server with server plug-ins. Instead, *Forman* discloses that system data collector 124 interfaces a collection controller, a collection notifier, a collection synchronizer, a collection data storage, and collection probes. Col. 6, lines 4-59. Further, as explained above, *Forman* fails to teach physical agents. As such, *Forman* fails to teach “a server integration framework interfacing the server with server plug-ins for the physical agents, and interfacing the server with server plug-ins for the heterogeneous measurements . . . .”



Claim 11 recites “an agent integration framework interfacing the logical agent with agent plug-ins for the physical agents . . . .” The Office Action admits *Smith* does not teach this limitation of claim 11, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing this limitation. However, *Forman* does not appear to teach the interfacing required by this limitation of claim 11. While, *Forman* teaches system data collector 124 is implemented from a framework (*see*, col. 6, lines 4-5), *Forman* does not appear to teach system data collector 124 interfaces a logical agent with agent plug-ins. Instead, *Forman* discloses that system data collector 124 interfaces a collection controller, a collection notifier, a collection synchronizer, a collection data storage, and collection probes. Col. 6, lines 4-59. Further, as explained above, *Forman* fails to teach physical agents. As such, *Forman* fails to teach “an agent integration framework interfacing the logical agent with agent plug-ins for the physical agents . . . .”

Furthermore, claim 11 recites “the physical agents thereby performing the heterogeneous measurements for a test in accordance with control by an end user via the GUI.” The Office Action admits *Smith* does not teach this limitation of claim 11, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing this limitation. However, *Forman* does not appear to teach physical agents. Further, *Forman* fails to teach any agents performing the heterogeneous measurements. As such, *Forman* does not teach “the physical agents thereby performing the heterogeneous measurements for a test in accordance with control by an end user via the GUI.”

Accordingly, the cited combination fails to teach each and every limitation of claim 11. As such, Applicant requests the rejection of record be withdrawn and the claim be allowed. Moreover, claims 12-15 depend from independent claim 11 thereby inheriting all the limitations therein. Therefore, at least for the reason detailed above regarding claim 11, limitations of claims 12-15 are not taught by the cited art. Thus, Applicant requests the rejections of record be withdrawn and the claims be allowed.

#### **D. Independent claim 16**

Claim 16 recites “a graphical user interface (GUI) communicating with the server. . . .” The Office Action cites column 2, lines 62-63 of *Smith* as teaching this limitation. Office Action, page 12. However, *Smith* does not appear to teach his GUI communicates with

his server. Further, the Office Action does not rely on *Forman* as teaching this limitation. As such, the cited references fail to teach “a graphical user interface (GUI) communicating with the server. . . .”

Further, claim 16 recites “means for interfacing the GUI with GUI plug-ins for physical agents, and for interfacing the GUI with GUI plug-ins for heterogeneous measurements . . . .” The Office Action admits *Smith* does not teach this limitation of claim 16 and therefore relies on *Forman*, column 6, lines 4-59, as disclosing this limitation. However, *Forman* does not appear to disclose means for interfacing the GUI with GUI plug-ins for physical agents and for interfacing the GUI with GUI plug-ins for heterogeneous measurements. While, *Forman* teaches system data collector 124 is implemented from a framework (*see*, col. 6, lines 4-5), *Forman* does not appear to teach system data collector 124 interfaces a GUI with GUI plug-ins. Instead, *Forman* discloses that system data collector 124 interfaces a collection controller, a collection notifier, a collection synchronizer, a collection data storage, and collection probes. Col. 6, lines 4-59. Further, *Forman* fails to teach physical agents. As such, *Forman* fails to teach “means for interfacing the GUI with GUI plug-ins for physical agents, and for interfacing the GUI with GUI plug-ins for heterogeneous measurements . . . .”

Further, claim 16 recites “means for interfacing the server with server plug-ins for the physical agents, and for interfacing the server with server plug-ins for the heterogeneous measurements . . . .” The Office Action admits *Smith* does not teach this limitation of claim 16, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing this limitation. However, *Forman* does not appear to teach the interfacing required by this limitation of claim 16. While, *Forman* teaches system data collector 124 is implemented from a framework (*see*, col. 6, lines 4-5), *Forman* does not appear to teach system data collector 124 interfaces a server with server plug-ins. Instead, *Forman* discloses that system data collector 124 interfaces a collection controller, a collection notifier, a collection synchronizer, a collection data storage, and collection probes. Col. 6, lines 4-59. Further, *Forman* fails to teach physical agents. As such, *Forman* fails to teach “means for interfacing the server with server plug-ins for the

physical agents, and for interfacing the server with server plug-ins for the heterogeneous measurements . . . .”

Further still, claim 16 recites “means for interfacing the logical agent with agent plug-ins for the physical agents . . . .” The Office Action admits *Smith* does not teach this limitation of claim 16, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing this limitation. However, *Forman* does not appear to teach system data collector 124 interfaces a logical agent with agent plug-ins. Instead, *Forman* discloses that system data collector 124 interfaces a collection controller, a collection notifier, a collection synchronizer, a collection data storage, and collection probes. Col. 6, lines 4-59. Further, as explained above, *Forman* fails to teach physical agents. As such, *Forman* fails to teach “means for interfacing the logical agent with agent plug-ins for the physical agents . . . .”

Furthermore, claim 16 recites “the physical agents thereby performing the heterogeneous measurements for a test in accordance with control by an end user via the GUI.” The Office Action admits *Smith* does not teach this limitation of claim 16, and therefore relies on *Forman*, column 6, lines 4-59, as disclosing this limitation. However, *Forman* does not appear to teach interfaced physical agents performing the interfaced heterogeneous measurements. As such, *Forman* does not teach “the physical agents thereby performing the heterogeneous measurements for a test in accordance with control by an end user via the GUI.”

Accordingly, the cited combination fails to teach each and every limitation of claim 16. As such, Applicant requests the rejection of record be withdrawn and the claim be allowed.

### **VIII. Conclusion**

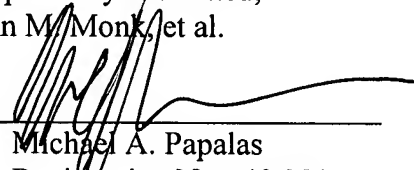
In view of the above, Applicants believe the pending application is in condition for allowance.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-1078, under Order No. 10030705-1, from which the undersigned is authorized to draw.

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Respectfully submitted,  
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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV 629201623 US, on the date shown below in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.  
Dated: August 7, 2007

Signature:

  
(Lorraine Davidoff)